



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2021-0912; FRL-9613-02-R2]

Approval of Air Quality Implementation Plans; New Jersey; Removal of Excess Emissions Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey, through the New Jersey Department of Environmental Protection, on December 14, 2017. The revision submitted by New Jersey was in response to a finding of substantial inadequacy and a SIP call published on June 12, 2015, for a provision in the New Jersey SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. The EPA is approving the SIP revision to correct the deficiency identified in the June 12, 2015, SIP call.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2021-0912. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Edward J. Linky, EPA Region 2, 290 Broadway, 25th floor, New York, New York 10007-1866, 212-637-3764; or email *Linky.Edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we” or “our” is used, it refers to EPA.

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I. What is the Background for this Action?

On April 22, 2022, we proposed to approve a SIP revision submitted by the State of New Jersey, through the New Jersey Department of Environmental Protection, on December 14, 2017. (87 FR 24090, April 22, 2022). In that proposal we also proposed to determine that the SIP revision corrects the deficiency with respect to New Jersey that we identified in our June 12, 2015, action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction” (“June 12, 2015 SIP call”) (80 FR 33839, June 12, 2015). The reasons for our proposed approval and determination are stated in the proposed action (87 FR 24090) and will not be restated here.

II. What Comments were received in response to this Proposed Action?

In response to the EPA’s April 22, 2022, proposed rulemaking on New Jersey’s SIP revisions, the EPA received one comment from the Sierra Club commending the

EPA for proposing to approve New Jersey's revision and requesting a quick final approval of the SIP revision. The EPA acknowledges the supportive comment. The comment may be viewed under Docket ID Number EPA-R02-OAR-2021-0912 on the *regulations.gov* website.

III. What Action is the EPA Taking?

The EPA is approving New Jersey's December 14, 2017, request to approve a revised New Jersey Administrative Code, Title 7, Chapter 27, Subchapter 7.2(k) (N.J. Admin. Code 7:27-7.2(k)) which removes N.J. Admin. Code 7:27-7.2(k)(2) from the New Jersey SIP. EPA has also determined this SIP revision corrects the deficiency identified in the June 12, 2015 SIP call.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of N.J. Admin. Code 7:27-7 and N.J. Admin. Code 7:27-7.2(k), listed in the amendments to 40 CFR part 52 set forth below and described in paragraph I. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq*

Lisa Garcia,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq*.

Subpart FF – New Jersey

2. In § 52.1570, the table in paragraph (c) is amended by revising the entry for “Title 7, Chapter 27, Subchapter 7” and adding an entry in numerical order for “Title 7, Chapter 27, Subchapter 7.2(k)” to read as follows:

§ 52.1570 Identification of Plan.

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(c)***

EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Title 7, Chapter 27, Subchapter 7	Sulfur	March 1, 1967	May 31, 1972, 37 FR 10880	Subchapter 7.2(k) is no longer approved due to EPA action on [insert date of publication in the Federal Register], [insert Federal Register citation]
Title 7, Chapter 27, Subchapter 7.2(k)	Commercial fuel exemption	November 6, 2017	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2022-16317 Filed: 7/29/2022 8:45 am; Publication Date: 8/1/2022]